

DOC NO  
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United States District Court 2010 APR 26 PM 3:54  
Western District of Wisconsin

) Craig Cunningham  
) Plaintiff, Pro-se  
)  
) v.  
)  
) Michael Montes, et al  
) Defendants.

PETER OPPENHEIM  
CLERK US DIST COURT  
W'D OF WI

**CIVIL ACTION NO. 16-v-761**

**Plaintiff's Response in Opposition to the Defendant's Motion for Sanctions**

1. The Plaintiff files this opposition to the Defendant's motion for sanctions.

**The Plaintiff has substantially complied with the court order to return the garnished funds, and therefore the motion is moot.**

2. The whole point of their motion appears to be directed at obtaining a return of the funds for Michael Montes. This has been accomplished 1 day after the motion was filed when the Plaintiff overnighted the funds to Attorney Kevin Trost and therefore the motion is moot as the only proper and reasonable relief sought has been obtained.

**The Plaintiff did not have a reasonable opportunity to respond to the Defendant's motion**

3. The Defendant's filed their motion on March 20<sup>th</sup>, and the response was ordered 7 days later, not the 14 days typical in the Federal Rules of Civil Procedure. Additionally, per FRCP 6(d), the Plaintiff should have been allocated an extra 3 days to respond to the motion to account for the time for mailing.

4. Instead, accounting for the mailing delay of 3 days, the Plaintiff essentially only had 4 days to respond to the motion, not 17, which is unreasonably short. If anything, the funds should have been sent to the court's registry pending an outcome of the case.

**The delay in returning the funds was deminimus and inadvertant**

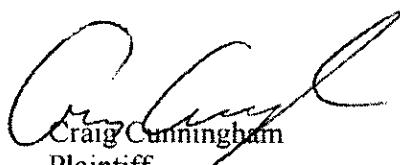
5. The Plaintiff's delay in returning the funds was caused by overseas travel when the motion and orders were being issued. Upon return to the USA, the Plaintiff was going through a large volume of mail and getting caught up on his cases, hence the delay in returning the funds of a mere 7 days.
6. The Defendants have not been prejudiced in any way by a 7 day delay, nor do they claim to have been. The Defendant's counsel did not reach out or communicate to the Plaintiff to see if he had returned the funds, how the defendants wanted the funds returned, or if the Plaintiff intended to return the funds or not. The Plaintiff sent the funds overnight the same day the Defendant's filed their motion for sanctions.

**The Defendant's relief requested is entirely unrelated to an appropriate remedy, particularly as the funds were returned promptly.**

7. The relief sought in their motion is overly broad, unrelated to the harm claimed, and unwarranted. The Plaintiff returned the funds, and thus there is no issue for the court to rule on. The Plaintiff's claims should not be dismissed with prejudice for a 7 day delay in returning funds. Furthermore, the Defendants untimely answers and evidentiary hearing ordered by the 7<sup>th</sup> Circuit to determine if Michael

Montes was evading service are also unrelated to the issue of a 7 day delay in returning the funds. These separate issues should be resolved by the court in due fashion.

Respectfully submitted,



Craig Cunningham  
Plaintiff,

Pro-se, April 26, 2018

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